

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1536 of 2000
TO
FIRST AAPPEAL No. 1551 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL Sd/-

AND

Hon'ble MR.JUSTICE M.C.PATEL Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

VAGHELA RAGHUVIRSINH AMARSINH

Appearance:

MS NANDINI JOSHI, AGP. for Appellant No.1.
MR HL JANI,AGP. for Appellant No.2.
MR SUNIL K SHAH for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.C.PATEL

Date of decision: 12/10/2000

#. All these appeals which are filed under section 54 of the Land Acquisition Act,1894 read with section 96 of the Code of Civil Procedure,1908 are directed against the common judgment and award dated December 21,1999 rendered by the learned 2nd Extra Assistant Judge and Special Judge (LAR) Ahmedabad (Rural) Mirzapur in Land Acquisition Case Nos. 1048/96 to 1063/96 by which it is held that the claimants are entitled to get compensation at the rate of Rs.70/- per sq.mtr. for their acquired lands. It may be stated that the Special Land Acquisition Officer, Narmada Project Unit-3, Ahmedabad had made common award dated August 31,1994 determining the amount of compensation payable to the claimants. All the land acquisition cases were consolidated with Land Acquisition Case No. 1048 of 1996 which was treated as main case and in which the parties had led common evidence. As common question of facts and law arise for our determination in these appeals we propose to dispose them of by this common judgment.

#. The Executive Engineer, Narmada Project, Dholka Branch Canal Construction Division No.3/2, Gandhinagar had proposed to the State Government to acquire agricultural lands of village Garodiya, Taluka Sanand, District Gandhinagar for the purpose of construction of Narmada Project Dholka Branch Canal. On scrutiny of the said proposal, the State Government was satisfied that agricultural lands of village Garodiya were likely to be needed for the said public purpose. Therefore, notification under section 4(1) of the Land Acquisition Act,1894 ('the Act' for short) was issued which was published in the Government Gazette on February 20,1992. Thereafter, those persons whose lands were sought to be acquired were served with notices and they had filed their objections against proposed acquisition. After considering their objections, the Special Land Acquisition Officer, Narmada Project, Unit No.3, Ahmedabad had forwarded his report to the State Government as contemplated by Section 5-A(2) of the Act. On consideration of the said report, the State Government was satisfied that agricultural lands of village Garodiya which were specified in the notification published under section 4(1) of the Act were needed for the public purpose of construction of Narmada Project, Dholka Branch Canal. Therefore, declaration under section 6 of the Act was made which was published in the Government Gazette on July 7,1992. Thereafter, interested persons were served with notices under section 9 of the Act for determination

of compensation. The claimants appeared before the Special Land Acquisition Officer and claimed compensation ranging from Rs.5,00,000/- to Rs.6,25,000/- per hectare. It may be stated that block nos. 77/1 and 77/10 of village Garodiya were permitted to be used for non agricultural purpose and therefore owners thereof had claimed compensation At the rate of Rs.400/- per sq.mt. Having regard to the materials placed before him, the Land Acquisition Officer by his award dated August 31,1994 offered compensation to the claimants At the rate of Rs.2.70 per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was inadequate, and therefore, accepted the amount of compensation under protest. They filed applications under section 18 of the Act requiring the Special Land Acquisition Officer, Narmada Project Unit 3, Ahmedabad to refer the matter to the Court for determination of appropriate amount of compensation payable to them. Accordingly, references were made to the District Court, Ahmedabad (Rural) at Mirzapur which were registered as Land Acquisition Case Nos. 1048/96 to 1063/96.

#. In the reference application it was claimed that village Garodiya had all the facilities such as light, water, school, primary school, telephone etc., and therefore, claimants ought to have been awarded compensation at the rate of Rs.200/- per sq.mt. for their acquired lands whereas owners of block nos. 77/1 and 77/2 ought to have been awarded compensation At the rate of Rs.400/- per sq.mt. In the reference applications the claimants had also claimed other benefits such as solatium, interest etc. The Special Land Acquisition Officer, Narmada Project, Unit-3, Ahmedabad contested reference application by filing written statement at exhibit 9. In the written statement, it was interalia pleaded that before determining the amount of compensation payable to the claimants relevant factors such as prevailing price of lands near the lands acquired, fertility, income from sale of agricultural produces etc. were taken into consideration and as just award was made assessing market value of the lands acquired, the reference application should be dismissed. The Executive Engineer, Narmada Project, Gandhinagar contested reference applications by filing written statement at Exh.11 and pleaded that in view of just award of Special Land Acquisition Officer, the claimants were not entitled to enhanced compensation.

#. Upon rival assertions of the parties, necessary issues for determination were raised by the Reference

Court at Exh.12. On behalf of the claimants, a pursish was submitted at Exh.13 with a request to the Reference Court to consolidate Land Reference Cases No.1048/96 to 1063/96 with Land Acquisition Case No.1048/96. The Reference Court had accepted the said pursish and the land reference cases were consolidated with Land Acquisition Case No.1048/96 which was treated as main case and in which the parties had led common evidence.

#. On behalf of the claimants witness Bhavubha Anopsing Vaghela was examined at Exh.41. He deposed before the Court that village Garodiya had facilities of water, light, school, telephone, cooperative societies etc., and the acquired lands were irrigated lands as well as equal in level and highly fertile. The witness asserted before the Court that claimants were raising different crops on the lands acquired and each claimant was getting Rs.35,000/- as net agricultural income per viga per year. The witness stated before the Court that village Garodiya was at a distance of 11 kms. away from Ahmedabad City and 8 Kms. away from Sarkhej-Gandhinagar Highway. According to this witness, Sanand-Ahmedabad Road as well as Kadi-Ahmedabad road passes through the village and village Sanand was 6 kms. away from village Garodiya. The witness stated before the Court that village Garodiya is situated between villages Godhavi, Manipur, Ghuma, Palodia and Racharda. Witness deposed that the factories are situated near village Garodiya and an educational institution is also quite near the village. According to this witness in adjoining village Garodiya, there were several farms such as Prathna, Kalfar, Surmay, Krishna, Tulip etc. and asserted that the area is well developed. This witness also stated before the Court that villages Racharda, Manipur, Godhavi and Garodiya are situated in one line and the inhabitants of his village have mainly their dealing with Ahmedabad city and Sanand town. According to this witness the land of village Nidhrada and lands of village Garodiya were equal and similar in fertility. The witness produced previous judgment of the Reference Court at Exh.38 relating to lands of village Nidhrada and claimed that as the lands of village Nidhrada were similar to the acquired lands, the claimants were entitled to compensation on the basis of said previous award. The witness thereafter referred to lands of village Ghuma and stated that the land of village Ghuma were also similar in fertility and potentiality to the land of village Garodiya. The witness produced another previous award of Reference Court at Exh.39 relating to land of village Ghuma and claimed that as the lands of village Ghuma were

similar in all respects to the lands acquired in the instant cases, the claimants should be paid compensation on the basis of the said award. In order to point out that lands of village Nidhrada which were previously acquired as well as lands of village Ghuma which were previously acquired were adjacent to the lands acquired, in the present cases, the witness produced map at Exh.40. In para 5 of his deposition the witness stated that Narmada Canal passes through village Godhavi and that boundary of village Godhavi touches village Garodiya. The witness further claimed that the lands of village Godhavi and village Garodiya have similar fertility and were level. The witness also deposed that village Godhavi and village Garodiya were at equal distance from Ahmedabad-Sarkhej Highway and development in both the villages was also similar. In cross-examination by the appellants, the witness denied the suggestion that lands of village Garodiya and lands of adjoining villages were not similar. The witness admitted that he had no documentary evidence to show that each claimant was getting Rs.35,000/- as net agricultural income per viga per year. On behalf of the present appellants, Mr.Dilipkumar Kantilal Shah, serving as Executive Engineer, Narmada Project, Dholka Branch Canal Division 3/2, Gandhinagar was examined at Exh.101. The witness referred to the procedure which was adopted by the State Government before acquiring the lands in question. The witness asserted before the Court that Special Land Acquisition Officer had taken into consideration sale instances as well as fertility before determining the amount of compensation for the lands acquired in the instant cases. According to this witness, the fertility of the lands of village Garodiya and other villages was not similar. The witness deposed before the Court that there was no big industry in the village and the claimants were not entitled to higher compensation. The witness produced previous award of Reference Court relating to agricultural lands of this very village at Exh.110 and claimed that the claimants should be awarded compensation on the basis of said award. In cross examination by the claimants, the witness admitted that he had no evidence to establish that village Garodiya was at a distance of 10 kms. from Taluka place. He also admitted that on the acquired lands the claimants were raising different crops such as Juvar, Millet, Castor etc. Another witness i.e. Pallaviben Ghanshyambhai was also examined on behalf of the appellants at Exh.105. She was the Special Land Acquisition Officer, Narmada Project, Unit-3, at the relevant time and had made award on August 31,1994 determining the amount of compensation payable to the claimants. According to her, claimants

had not produced any reliable evidence before her to substantiate their claim regarding higher compensation but she had taken into consideration valuation report, fertility of the lands etc. and had thereafter determined the amount of compensation payable to the claimants. In her cross examination by the claimants, she admitted that she had not seen the lands acquired. Further she in terms admitted that village Garodiya and village Godhavi were adjoining each other. She pleaded ignorance regarding judgment of Reference Court rendered in respect of agricultural lands of village Godhavi and stated that village Godhavi is at a distance of 10 kms. from Ahmedabad.

#. After recording of oral evidence of witnesses was over, a pursis was submitted on behalf of claimants at Exh.107 on September 22,1999 seeking permission of the Reference Court to produce the award of Reference Court relating to agricultural lands of village Godhavi with list Exh.108. The learned Government Pleader had made an endorsement on Exh.108 that he had no objection if the previous award relating to agricultural lands of village Godhavi was exhibited. Accordingly, the previous award relating to agricultural lands of village Godhavi was taken on record of the case and was marked as Exh.109.

#. On appreciation of evidence led by the parties, the Reference Court deduced that the claim of the claimants that each claimant was getting Rs.35,000/- as net agricultural income per viga per year was not well founded and the claimants were not entitled to compensation on yield basis. The Reference Court referred to decisions of the Supreme Court and High Court and held that previous award relating to similar and adjacent lands can be relied upon for the purpose of assessing market value of the lands acquired in the instant cases. The Reference Court noticed that the previous award of the Reference Court relating to agricultural lands of this very village cannot be ignored but at the same time previous award of Reference Court in relation to agricultural lands of village Godhavi was also relevant as lands acquired from said village were quite near to the lands acquired in the instant cases. The Reference Court noticed that in the previous award relating to lands of village Godhavi the claimants were awarded compensation at the rate of Rs.89.50 per sq.mt. whereas with reference to lands of this village which were previously acquired, the claimants were paid compensation at the rate of Rs.35/- per sq.mt., and therefore, the learned Judge was of the view that the claimants in the present cases should be awarded on the

basis of average of those two awards and held that the claimants are entitled to compensation at the rate of Rs.70/- per sq.mt. The learned Judge further noticed that the lands of the claimants which were acquired in the instant case were situated near villages like Ghuma, Nidhrad etc., and therefore, the previous awards relating to lands of village Nidhrad and Ghuma were also relevant. The Reference Court took into consideration the previous awards of the Reference Court relating to agricultural lands of village Ghuma and Nidhrad and held that on the basis of those two previous awards also the claimants were entitled to compensation at the rate of Rs.70/- per sq.mt. In ultimate analysis, the Reference Court has held that the claimants are entitled to compensation at the rate of Rs.70/- per sq.mt. giving rise to the present appeals.

#. Ms.Nandini Joshi, learned Assistant Government Pleader submitted that previous awards relating to villages Godhavi, Nidhrad and Ghuma should not have been relied upon by the Reference Court, more particularly, when the previous award of Reference Court relating to agricultural lands acquired from this very village is on the record and therefore the compensation awarded to the claimants should be suitably reduced. Mr.Sunil K.Shah, learned Counsel for the claimants pleaded that previous award of the Reference Court relating to agricultural lands of this very village is rightly not made basis for awarding compensation to the claimants as correct principles governing determination of compensation were never borne in mind by the Reference Court, and therefore, the amount of compensation awarded by the Reference Court should not be reduced at all. It was claimed that the evidence led by the claimants establishes that agricultural lands of villages Godhavi, Ghuma and Nidhrad were similar in all respects to the lands acquired in the present case and therefore if those comparable awards are taken into consideration the claimants would be entitled to more compensation but there is no question of reduction in rate of compensation determined by the Reference Court. The learned Counsel for the claimants emphasised that a just award has been made by the Reference Court awarding compensation to the claimants, therefore, the appeals should be dismissed.

#. We have heard learned Counsel for the parties and taken into consideration the record of the case as well as paper book supplied by learned Counsel for the claimants which includes oral as well as documentary evidence led by the parties. From the record of the

case, it is evident that some of the lands acquired are irrigated lands whereas some of the lands acquired are not irrigated lands. In this case, the claimants have not based their claim for enhanced compensation either on sale instances or on yield basis and have relied upon previous awards of the Reference Courts. It is well settled that the award rendered by the Reference Court in respect of similar lands and which has become final can be taken into consideration for the purpose of determining market value of the lands acquired subsequently from the same village or adjacent village. In the category of sales fall awards by the Court in previous case of land acquisition. They are judgments in personam based on the balance of evidence in the case adduced by the parties. Price of land in the vicinity in previous land acquisition proceedings can be treated as afforded a good guide for determination of compensation to be awarded for lands acquired subsequently. In assessing market value of a piece of land, the price paid in other transactions relating to lands in the neighbourhood must be of some value. What its value should be has to be determined by the Court after considering all the evidence on which previous award is founded. The awards given by the Reference Court are at least relevant material and may be in the nature of admission with regard to value of the lands on behalf of the State and if the lands involved in the awards are comparable lands and in reasonable proximity of the subsequently acquired lands, rates found in the said previous awards can be treated as reliable material to afford a basis to work upon for determination of the compensation on a later date. Having regard to these principles, we now proceed to examine the relevancy of different previous awards produced by the parties on the record of the case. Exh.110 is the previous award of the Reference Court relating to agricultural lands of this very village. It indicates that pursuant to publication of notification under section 4(1) of the Act in the Government Gazette on February 12,1987, agricultural lands of village Garodiya were acquired by the State Government for construction of Santej - Racharda - Unavi - Garodiya - Godhavi Kans yojana. Therein the Special Land Acquisition Officer by his award dated December 31,1988 had awarded compensation to the claimants at the rate of Rs.2.50 per sq.mt. Feeling aggrieved by the said offer of compensation the claimants had sought references and the Reference Court in Land Acquisition Case Nos. 723/89 to 744/89 by common judgment and award dated August 5,1995 had held that claimants were entitled to compensation At the rate of Rs.35/- per sq.mt. Para 14 of the said judgment makes it clear that the amount of

compensation was not awarded to the claimants on yield basis. In the said case, the claimants had relied upon previous award of Reference Court rendered in respect of lands of village Sanand which was produced at Exh.60. After noticing different factors, Reference Court had held that the claimants were not entitled to compensation on the basis of previous award relating to agricultural lands of village Sanand. However, in para 14 of the judgment without assigning any reason whatsoever the Reference Court had held that the claimants were entitled to compensation At the rate of Rs.35/- per sq.mt. The judgment of Reference Court is not informed by reasons and nothing is discussed as to on what basis the compensation payable to the claimants was determined at the rate of Rs.35/- per sq.mt. Thus, previous award of Reference Court relating to agricultural lands of this very villaage is of little assistance to the Court in determining correct market value of the lands acquired in the present case.

##. The evidence adduced by the claimants establishes that Narmada Canal passes through lands of village Godhavi and village Garodiya and revenue boundries of both the villages are common. As per the evidence of witness Bhanubha Anopsinh Vaghela, fertility of lands of village Godhavi is similar to fertility of lands of village Garodiya. Moreover, both the villages are situated at equal distance from Ahmedabad - Sarkhej Highway. Though two witnesses were examined by the present appellants it could not be established that the lands of village Godhavi were better in quality than the lands of village Garodiya. Further, evidence indicates that the lands of village Godhavi which were previously acquired and the lands which are acquired in the present case are quite nearby. Under the circumstances, we are of the opinion that no error was committed by the Court in placing reliance on the previous award relating to lands of village Godhavi. Previous award relating to lands of village Godhavi which is produced at exhibit 109 indicates that pursuant to publication of notification under section 4(1) of the Act in the Government Gazette on February 20,1992, agricultural lands of village Godhavi were acquired for public purpose of construction of Narmada Project, Dholka Branch, Canal of Sardar Sarovar Narmada Corporation Limited. Therein the Land Acquisition Officer by his award dated October 10,1994 had offered the compensation to the claimants at the rate of Rs.9.50 per sq.mt. for non-agricultural lands, Rs.3.75 per sq.mt. for irrigated lands and Rs.2.55 per sq.mt. for non-irrigated lands. Feeling aggrieved by the said offer of compensation, the claimants had sought

references and the Reference Court in Land Acquisition Cases No. 240/96 to 258/96 by judgment and award dated April 16,1999 had held that the claimants were entitled to compensation At the rate of Rs.87/- per sq.mt. over and above the compensation which was awarded by the Land Acquisition Officer. If this award is taken into consideration the claimants would be entitled to higher compensation than what is awarded by the Reference Court in the present cases. But having regard to the fact that this award relates to another village the Reference Court has awarded Rs.70/- per sq.mt. as compensation to the claimants in these cases which cannot be said to be excessive at all. Moreover, previous award relating to agricultural lands of village Nidherda produced at Exh.38 also indicates that pursuant to publication of notification under section 4(1) of the Act in the official gazette on December 20,1984, the agricultural lands of village Nidharda were acquired for public purpose of Ghuma - Godhavi - Nidharda Road. Therein the Land Acquisition Officer vide his award dated October 7,1996 had offered compensation to the claimants ranging between Re.1/- to Rs.1.25/- per sq.mt. The claimants had sought references and the Reference Court in Land Acquisition Cases No. 1630/87 to 1645/87 had awarded compensation to the claimants claimed at the rate of Rs.50/- by judgment and award dated March 5,1994. It is well settled that by passage of time the price of land always increases and therefore the finding recorded by the learned Judge of the Reference Court that on the basis of previous award of lands of village Nidharad, the claimants in this case would be entitled to compensation At the rate of Rs.99/- per sq.mt. cannot be considered as erroneous. However, in ultimate analysis the Reference Court has also awarded Rs.70/- which cannot be said to be excessive in any manner. Again another previous award relating to land of village Ghuma produced at Exh.39 shows that the agricultural lands of village Ghuma were acquired for public purpose of Gota - Godavi Ghuma drainage pursuant to publication of notification under section 4(1) of the Act in the official gazette on 16.12.1983. Therein the Land Acquisition Officer by his award dated October 7,1996 had awarded compensation to the claimants at the rate of Rs.19/- per sq.mt. but the Reference Court in Land Acquisition Cases No. 630/87 had awarded compensation to the claimants At the rate of Rs.61/- per sq.mt. vide judgment and order dated April 30,1990. The perusal of this judgment indicates that correct principles governing determination of compensation were never borne in mind and therefore this judgment will have to be ignored. At the cost of repetition we may state that the evidence adduced by the

claimants clearly establishes that the agricultural lands of villages Godavi and Nidarda are similar in all respects to the lands acquired in present cases and therefore, we are of the opinion that no error was committed by the Reference Court in awarding compensation to the claimants at the rate of Rs.70/-per sq.mt. Having regard to the evidence on record of the case, we are satisfied that a just award has been passed by the Reference Court and no ground is made out by the learned Counsel for the appellants to entertain the present appeals.

##. The appeals therefore cannot be entertained and are liable to be dismissed.

##. For the foregoing reasons all the appeals fail and are dismissed with no order as to costs.

Sd/- Sd/-
(J.M.Panchal, J) (M.C.Patel,J)